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## BELL ATLANTIC'S RESPONSES TO SPECIFIC ALLEGATIONS

This appendix sets forth Bell Atlantic's responses to various allegations raised by commenters in this proceeding. These allegations are unrelated to this merger, and, for the most part, merely rehash arguments that competitors have raised elsewhere. Most of these allegations are being or have been addressed in other proceedings before the Commission, before state regulatory agencies, or before federal or state courts. There is no basis for the Commission to consider them in this proceeding. Moreover, as detailed below, these allegations are without merit, and thus do not under any circumstances affect the Commission's analysis of the proposed merger.

Commenters' allegations fall into seven categories: (1) issues relating to the Bell Atlantic/NYNEX conditions; (2) negotiation issues; (3) collocation issues; (4) other interconnection issues; (5) resale issues; (6) OSS issues; and (7) miscellaneous issues.

### 1. ISSUES RELATING TO THE BELL ATLANTIC/NYNEX CONDITIONS

AT&T and MCI WorldCom's arguments that Bell Atlantic has failed to comply with the conditions imposed by the Commission in connection with the merger of Bell Atlantic and NYNEX are both misplaced and wrong.

These arguments parrot claims already being addressed in separate proceedings.[1] In particular, AT&T and MCI WorldCom claim that Bell Atlantic has not complied with the condition that new interconnection prices must be based on forward-looking economic costs and has not entered into good faith negotiation to establish performance standards -- both claims that these same carriers have raised in previous complaints. The Commission has repeatedly held that claims of this type should be addressed (if at all) in appropriate complaint or enforcement proceedings, rather than in license transfer proceedings.

What is more, the assertion that Bell Atlantic has not complied with the conditions from the Bell Atlantic/NYNEX merger is untrue. Bell Atlantic has spent millions of dollars and tens of thousands of person-hours to comply with those conditions, and has in fact complied with every one -- including the three highlighted by AT&T and MCI WorldCom.

*First*, AT&T and MCI WorldCom complain that Bell Atlantic has not complied with the condition that, "*[t]o the extent that* Bell Atlantic/NYNEX proposes rates" for interconnection or unbundled network elements during the 48-month post-merger term of the conditions, "*any such proposal* shall be based upon the forward-looking economic cost to provide those items."[2] The

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[1] Certain other petitioners echo the allegation that Bell Atlantic has not met the merger conditions, but they merely piggyback on the previous complaints filed by AT&T and MCI WorldCom. *See, e.g.*, Supra Telecom at 15.

[2] *See Bell Atlantic/NYNEX Order*, App. C, Condition 6 (emphasis added).

prices proposed by Bell Atlantic both before and after the merger *were* based on forward-looking economic costs. Contrary to the current claims, those proposals were not based on "embedded costs," which are the costs incurred in the past to build the existing network. Rather, those pricing proposals assume the use of efficient forward-looking technologies and procedures.[3]

Moreover, the pricing condition by its terms does not apply to the *pre-merger* proposals that AT&T and MCI WorldCom have complained about. The Commission did not, as AT&T and MCI WorldCom now maintain, require Bell Atlantic to propose new rates -- and understandably so, because that would have entailed replacing proposals that had been filed and litigated prior to the merger, or abrogating the prices that state commissions already had set.[4] In any event, AT&T itself has admitted that the rates that have been set in Bell Atlantic's states -- based in whole or in part on the prices proposed by Bell Atlantic -- are in fact based on forward-looking economic costs.[5]

*Second*, MCI WorldCom also claims that Bell Atlantic has not complied with the condition that it "engage in good faith negotiations . . . in response to reasonable requests" to establish performance standards and enforcement mechanisms.[6] The truth, however, is that Bell Atlantic has negotiated with any carrier that has asked it to, has reached agreements with some, and has gone to arbitration with others to resolve open issues.

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[3]For example, all switches are assumed to be digital, all interoffice cable is assumed to be fiber, loop costs reflect forward-looking fiber deployment, all loops that include fiber assume the use of digital loop carrier equipment, and utilization rates assume substantial improvements over actual utilization in the network today. *See, e.g.*, Motion to Dismiss, *AT&T Corp. v. Bell Atlantic Corp.*, File E-98-05 (filed Dec. 15, 1997); Brief of Bell Atlantic, *AT&T Corp. v. Bell Atlantic Corp.*, File E-98-05 (filed Mr. 13, 1998); Reply Brief of Bell Atlantic, *AT&T Corp. v. Bell Atlantic Corp.*, File E-98-05 (filed April 1, 1998).

[4]The fact that this condition is prospective only is hardly surprising. Prior to the merger, Bell Atlantic and NYNEX each had proposed interconnection prices based on forward-looking costs. The concern raised by the Commission was that, once the merger was completed, the combined new company might somehow restrict local competition in a way that the separate, pre-merger companies would not. *See Bell Atlantic/NYNEX Order* ¶ 192. The pricing condition addresses this concern by ensuring that any new prices proposed by the combined company will continue to be based on forward-looking costs.

[5]This admission was in an "Arbitration Scorecard" contained in a "Local Competition Handbook" on AT&T's Website (at www.att.com/publicpolicy/handbook). AT&T removed the Handbook when Bell Atlantic cited it in response to AT&T's pricing complaint, but Bell Atlantic filed the full text with the FCC. *See* Letter from Lydia R. Pulley, Bell Atlantic, to Ms. Diane Griffin Harmon, FCC, File No. E-98-05, dated March 30, 1998.

[6]*See Bell Atlantic/NYNEX Merger Order*, App. C, Condition 7.

MCI, in contrast, chose not to negotiate. Bell Atlantic made a comprehensive proposal for performance standards and enforcement mechanisms. MCI promised to provide a substantive response, but never did so. Bell Atlantic nevertheless unilaterally offered certain terms to MCI that were incorporated into a final agreement with another carrier at the other carrier's request. At that point, instead of negotiating, MCI chose to file a complaint with the FCC, when it asserted that Bell Atlantic did not negotiate in good faith.[7]

*Third*, at the FCC's recent en banc hearing, MCI WorldCom added a new complaint to its litany, asserting that Bell Atlantic had not met the requirement to use commercially reasonable efforts to establish uniform interfaces for its operations support systems.[8] This claim is also unfounded.

At the time of the merger, Bell Atlantic and NYNEX each had deployed different interfaces. As a result, a competitor who wanted to submit resale or unbundled element orders in states served by both companies would have to develop two separate systems of its own -- one system to submit orders in a NYNEX state, such as New York, and another system to submit orders in a Bell Atlantic state, such as Virginia. In the wake of the merger, however, Bell Atlantic has spent millions of dollars to deploy new interfaces throughout its region. As a result, it now has common interfaces available in all its states. Unlike before the merger, a competing carrier can now do business throughout the former NYNEX and Bell Atlantic regions without developing two separate systems.

Moreover, the specific issues raised at the en banc hearing actually have nothing to do with the interfaces themselves, which are the means whereby competitors can connect their systems to Bell Atlantic's systems. Instead, MCI WorldCom's specific grievances relate to the fact that information on the order forms transported over the interfaces sometimes differs. But that is hardly a surprise. While the interfaces are uniform, the Bell Atlantic systems are not. Nor are the products available in each state the same. As a result, the information required on order forms in New York may well differ from the information on order forms in Virginia. These differences are inherent in running local businesses, and do not violate the NYNEX commitments.[9]

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[7]*See* Brief of Bell Atlantic, *MCI Telecommunications Corp., et al. v. Bell Atlantic-Delaware, Inc. et al.*, File No. E-98-32, pp. 2-8 (filed Oct. 2, 1998) (outlining history of negotiations).

[8]*See Bell Atlantic/NYNEX Merger Order*, App. C, Condition 4.

[9]In any event, competing carriers are not prejudiced by these differences. To the extent different information must be entered on the forms, that requirement will apply whether the form is being filled out by a Bell Atlantic service representative or by a competitor's service representative. In fact, the differences in the information on order forms submitted by competing carriers are actually *less* than they are for Bell Atlantic's own service representatives, so Bell Atlantic actually is providing competing carriers with superior access to its operating support systems than it provides itself.

Finally, AT&T and MCI WorldCom are wrong to claim that Bell Atlantic has disputed the Commission's authority to enforce the merger conditions. Bell Atlantic has never disputed the Commission's authority to enforce the conditions. It is true, of course, that state commissions retain jurisdiction to set prices and to arbitrate open issues relating to performance standards. But that is different from whether or not the FCC can enforce the merger conditions, for example by requiring Bell Atlantic to propose new prices based on forward-looking costs or to negotiate in good faith.

## 2. NEGOTIATION ISSUES

### a. General Complaints Regarding Negotiations

A few CLECs allege, in mostly non-specific terms, that Bell Atlantic has acted improperly in negotiating interconnection agreements, proposing unreasonable terms, creating unnecessary delays, and acting in bad faith.[10]

Response: Bell Atlantic has signed 757 interconnection agreements with competitors, of which 534 have been approved by state commissions to date. In the last year alone, Bell Atlantic has signed over 450 agreements, a 163 percent increase over the previous year.

Moreover, the few specific examples provided by competitors are without merit. For example, though Cablevision claims that Bell Atlantic significantly delayed negotiations, those negotiations were in fact conducted and completed within the timeframes specified by the 1996 Act.[11] (The agreement with Cablevision was approved within 10 months from the time Bell Atlantic received a request to negotiate, not 11 months as Cablevision claims.)

### b. Alleged Refusal to Permit Opt-In

A few commenters claim that Bell Atlantic has impeded their efforts to opt-in to pre-existing interconnection agreements, and has insisted upon relitigating certain issues, primarily the issue of whether reciprocal compensation applies to Internet traffic.[12] Some commenters further assert that Bell Atlantic improperly has required carriers seeking to adopt a pre-existing agreement to accept any subsequent modifications to such agreement.[13]

Response: Bell Atlantic has permitted carriers to obtain pre-existing interconnection agreements under section 252(i), and scores of agreements have been signed with competing carriers

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[10] Hyperion at 11-13; Cablevision at NY PUC Attachment p. 4.

[11] Cablevision at NY PUC Attachment pp. 2-5.

[12] Sprint at 27 n. 52; BayRing at 14; Hyperion at 17; PaeTec at 2.

[13] CoreComm at 14; CTC at 22; BayRing at 14-15; Hyperion at 16-19; PacTec at 3; RCN at 7C.

who chose to opt-in to existing agreements. Moreover, while Bell Atlantic (like competing carriers) has litigated certain issues where necessary to preserve its legal rights, including the issue of whether reciprocal compensation applies to Internet traffic, Bell Atlantic has complied with all applicable state decisions on this and other issues.

Some commenters also complain that Bell Atlantic requires CLECs that adopt a pre-existing agreement to accept subsequent modifications to such agreement. Of course, an existing agreement necessarily includes any changes that the original parties agreed to through the date that another carrier asks to opt in. Nevertheless, in response to requests from competitors, Bell Atlantic has agreed that competing carriers may opt in to agreements without accepting all the modifications agreed to after the original contract is signed.

**c. Rate Schedules**

Some commenters allege that, although they sought to opt in to Bell Atlantic's agreements with other carriers signed shortly after the Act, the agreement they received contained different rates for than the prior agreements.[14] They also claim that some states have rejected Bell Atlantic's understanding that the rates adopted by those commissions should be used rather than the rates contained in earlier agreements.[15]

Response: The rates that Bell Atlantic provided to these carriers were the final rates set by the relevant state commission, and the rates for transport and termination that they complain about were actually lower than the rates in the previous agreements. Moreover, these state-set rates generally supersede all previous rates agreed to or arbitrated, and were based on detailed cost studies that were not available when the prior agreement was signed.[16] The carriers that want the higher rates typically have no interest in providing competitive local telephone service, but instead merely hope to skim off large cash payments in the form of reciprocal compensation for one-way calls to the Internet. Nevertheless, where state commissions have ruled that Bell Atlantic must provide CLECs with the higher rates contained in previous agreements, Bell Atlantic has done so. For example, in Maryland, contrary to Focal's claims, Bell Atlantic on October 2, 1998 signed an agreement with Focal that contains the same terms and conditions as the interconnection agreement between Bell Atlantic and MFS. Bell Atlantic did the same with Starpower in Maryland on September 4, 1998.

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[14] Focal at 12-13; Hyperion at 31.

[15] Focal at 12-13; Hyperion at 31.

[16] *See* IMO Investigation re: Local Exchange Competition for Telecommunications Services, New Jersey BPU Docket No. TX9512631 (Dec. 2, 1997).

### d. Reciprocal Compensation for Internet Traffic

Some commenters allege that Bell Atlantic improperly has refused to provide CLECs with pre-existing interconnection agreements that provide for the payment of reciprocal compensation for Internet traffic.[17] They complain that Bell Atlantic has added language in its interconnection agreements reiterating that it does not agree that calls to the Internet are subject to reciprocal compensation.[18]

Response: None of the contracts that Bell Atlantic has signed agree to pay reciprocal compensation on Internet calls. These contracts expressly provide that reciprocal compensation applies only to "local" calls. Some state commissions nevertheless have required Bell Atlantic to pay reciprocal compensation on Internet traffic, but have done so based on a mistaken interpretation of prior FCC decisions. Bell Atlantic believes these decisions are incorrect, but is complying with state commission orders directing it to pay compensation on this traffic. Bell Atlantic also has allowed CLECs in such states to opt-in to existing agreements and to collect reciprocal compensation under the outstanding state orders subject to the inclusion of language reiterating Bell Atlantic's legal position. Finally, the FCC has confirmed that dedicated traffic to the Internet is *not* local, and a similar decision confirming that switched traffic is not local is expected any day.

### e. Agreement to Serve Residential Subscribers

Hyperion alleges that, in Vermont, it tried to opt in to the terms of a pre-existing agreement, but that Bell Atlantic attempted to impose a condition that Hyperion agree to provide service to residential subscribers.[19]

Response: The FCC previously has emphasized that Bell operating companies are entitled to require a competing carrier to agree to an implementation schedule indicating when it will meet the residential service commitment.[20] That is all that Bell Atlantic sought to do in this case. Specifically, Bell Atlantic's initial interconnection agreement with Hyperion (signed in 1996) provided (in Section 3.0) that Hyperion was a provider of telephone exchange service to residential subscribers. During the term of that agreement, however, Hyperion did not provide service to residence customers. In negotiations over a successor agreement, Hyperion sought to adopt a pre-existing agreement (with KMC Telecom) that also provides that it "intends to be a [facilities-based]

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[17] PaeTec at 5; CoreComm at 14-15; CTC at 22-23; BayRing at 14-15; RCN at 7.

[18] Hyperion at 17-18; CoreComm at 14-15.

[19] Hyperion at 19.

[20] *Application of SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Oklahoma*, Memorandum Opinion and Order, 12 FCC Rcd 8685, 8706 n.109 (1997) (BOCs are free to negotiate implementation schedules for their interconnection agreements.).

provider of telephone exchange service to residential [subscribers]." Bell Atlantic merely asked it to provide a more specific implementation schedule.

## 3. COLLOCATION ISSUES

### a. Space Availability

AT&T and Sprint allege that Bell Atlantic improperly has refused to make space available for collocation.[21]

Response: As of October 1998, CLECs had installed 653 collocation nodes (including 175 virtual notes) in Bell Atlantic central offices, a 63 percent increase from the previous year. In addition, Bell Atlantic is in the process of fulfilling approximately 700 additional collocation requests. Because of the large number of collocation sites that already exist or are in progress, collocation space is limited in some offices. Where space is limited, Bell Atlantic provides virtual collocation as provided in the Act. Bell Atlantic also conducts searches to make additional space available, and has accepted various proposals for how to create additional space. In addition, Bell Atlantic has agreed to permit state commissions to conduct "walk-throughs" of Bell Atlantic's central offices where space availability is the subject of contention. Bell Atlantic also offers various alternatives to a full collocation cage to address space constraints, such as smaller cages and sharing of cages.

### b. Rates

Some commenters claim either that Bell Atlantic charges excessive rates for physical and virtual collocation,[22] or complain that Bell Atlantic has imposed special construction charges for collocation.[23]

Response: The rates that Bell Atlantic charges for collocation are cost-based and are reflected in collocation tariffs filed with state commissions and the FCC. Any construction charges are simply a pass-through of what it costs Bell Atlantic to construct a cage at the other carrier's request; other carriers have the option of doing the work themselves (through an approved contractor) if they do not wish to pay the charge. Other carriers also have the option of going to a smaller cage, of sharing cages with other carriers or of forgoing a cage.

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[21] AT&T at 17-19; AT&T Boyle Aff. App. C; Sprint Bauer Aff. at 23.

[22] Sprint Brauer Aff. Att. E at 25-26.

[23] Hyperion at 31; BayRing at 24; Focal at 23; PaeTec at 9; CTC at 30; CoreComm at 30; RCN at 3.

### c. Cage Restrictions

Some commenters allege that Bell Atlantic improperly has refused to provide collocation cages smaller than 100 square feet; that Bell Atlantic refuses to permit "cageless" collocation; and that Bell Atlantic restricts the kind of equipment that carriers may collocate.[24]

Response: These allegations are unfounded. First, Bell Atlantic does in fact provide cages smaller than 100 square feet, and even filed a tariff with the FCC to make 25 square-feet cages available throughout its region. In addition, Bell Atlantic permits carriers to share cages, to use Assembly Room/Assembly Point arrangements, and to forgo use of a cage. Likewise, Bell Atlantic does provide a form of cageless collocation under its Shared Collocation Open Environment offering. Finally, Bell Atlantic has permitted carriers to collocate any kind of transmission equipment that is used for interconnection and access to UNES, which is what the 1996 Act requires. In addition, Bell Atlantic has complied, and will continue to comply, with state decisions requiring Bell Atlantic to permit collocation of remote switching modules.

## 4. Other Interconnection Issues

### a. Alleged Trunk Provisioning Delays

BayRing claims that Bell Atlantic has not provisioned trunks in a timely manner, and that Bell Atlantic refused to provide it with routing diversity, causing service outages for BayRing's customers.[25] RCN, in turn, complains that Bell Atlantic has refused to allow RCN to interconnect through its electrical vaults.

Response: As an initial matter, Bell Atlantic has a strong record with respect to providing competitors access to interconnection trunks, having provided nearly 500,000 interconnection trunks to competitors (over which it has exchanged over 21 billion minutes of traffic).

In Bay Ring's case, Bell Atlantic has made every effort to support BayRing in establishing interconnection with Bell Atlantic's network, including multiple meetings in which Bell Atlantic's subject matter experts assisted BayRing with the interconnection process and attempted to accelerate trunk service dates. BayRing, however, repeatedly submitted incorrect Access Service Requests (ASRs), which are the industry-standard method for defining a CLEC's network requirements and for ordering interconnection trunks. Although Bellcore provides training to CLECs on how properly to complete ASRs, it is unclear whether BayRing ever sought or obtained such training. Nevertheless, Bell Atlantic has offered BayRing extensive assistance with ASRs.

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[24] Hyperion at 34; BayRing at 27; Focal at 25; PaeTec at 9; RCN at 24.

[25] BayRing at 7-8.

Moreover, Bell Atlantic has not refused to provide routing diversity. Bell Atlantic has indeed provided routing diversity to BayRing in the two central offices about which it complains – Portsmouth and Manchester. Moreover, since the service outage that affected BayRing (which BayRing admits could not have been "totally avoided"), Bell Atlantic has fulfilled BayRing's request for additional trunks to further enhance its routing diversity.

RCN claims that Bell Atlantic refused to interconnect with RCN in Massachusetts via the electrical manhole serving its central offices.[26] Specifically, RCN sought to interconnect through electrical vaults (owned and operated by Boston Edison Co. (BECO)), rather than through Bell Atlantic's telecommunications vaults. Although this proposal raised severe safety concerns, Bell Atlantic worked extensively to determine whether there was a reasonable way it could accommodate the request. But, after numerous exchanges, RCN withdrew its request when it became apparent that BECO was unwilling to proceed due to its safety concerns.

**b. Alleged Pole and Conduit Delays**

RCN alleges that Bell Atlantic delayed providing RCN access to conduits in Manhattan.[27] RCN and BayRing claim that Bell Atlantic has not provided pole attachments in a timely manner.[28]

Response: RCN's complaints about delays in constructing conduit space in Manhattan are unfounded. The records of Empire City Subway -- the entity franchised by the City of New York to build and manage conduit space in New York -- indicate that the average conduit construction time for RCN in 1998 through November is 112 calendar days. This is slightly less than the average for all entities, and below the average for Bell Atlantic itself. It takes time to find or create space in crowded conduits under the streets of Manhattan, but this affects all carriers equally.

Bell Atlantic has worked diligently to fulfill BayRing's and RCN's orders for pole attachments. This process is not, however, entirely within Bell Atlantic's control. Before fulfilling an order for a pole attachments, it is first necessary to coordinate with other pole attachers, including other CLECs and electric utilities. Moreover, it is necessary to complete "make ready" work prior to attachment. Bell Atlantic regularly apprises CLECs of the status of their pending pole attachment applications and associated issues.

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[26] RCN at 4.

[27] RCN at 6.

[28] BayRing at 9.

### c. Other Alleged Provisioning Delays

Sprint asserts, based largely on pleadings submitted by AT&T to the New York PSC, that it takes longer for Bell Atlantic to provision interconnection to CLECs than for Bell Atlantic to provision its own retail services.[29]

Response: Under the strict supervision of the NYPSC, Bell Atlantic already has agreed to go well beyond the requirements of the Act, and the New York local exchange market is the most competitive in the country. Moreover, the specific claims that AT&T made in New York are wrong. For example, AT&T complained in New York that Bell Atlantic was taking longer, on average, than the agreed upon standard interval to fill certain UNE orders. But it turned out that the average AT&T relied upon included a number of orders that it had asked not to be filled until roughly double the standard interval, skewing the results. In any event, these claims already are being addressed by the New York commission.

### d. Number Portability

Hyperion alleges that Bell Atlantic has not provided remote call forwarding in a timely and accurate manner.[30]

Response: Hyperion's claim is based on data that is significantly out of date and inconsistent with Bell Atlantic's performance record in providing number portability on a timely basis, as reflected in the performance reports submitted to state regulators and the FCC. In addition, Bell Atlantic was the first Bell Company to offer local number portability. It made number portability available in Maryland and Philadelphia since October 1997 and in New York City since December 1997,[31] and is offering number portability ahead of the schedule mandated by the FCC.[32]

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[29] Sprint Brauer Aff. Att. E at 16.

[30] Hyperion at 11-13.

[31] Speech by Bell Atlantic CEO Raymond Smith, Federal Communications Bar Association, Feb. 26, 1998.

[32] Bell Atlantic, Competition Update: A Regular Report on the State of Competition, July 1998, .

### e. Access to SS7 and Databases

BayRing and RCN allege that Bell Atlantic did not provide routing diversity for its SS7 network.[33] RCN further asserts that Bell Atlantic (1) refused to provide RCN with STPS-1 interconnection and D8ZS level connectivity pursuant to their interconnection agreement, and (2) that Bell Atlantic did not provide RCN access to the customer name data base in a timely manner.[34]

Response: The delays in providing BayRing SS7 interconnection were attributable to BayRing's own actions. First, BayRing did not obtain SS7 certification before submitting its request for SS7 interconnection. Second, once BayRing obtained such certification, it informed Bell Atlantic that its switch was not operational, precluding any opportunity for SS7 testing.

RCN's claims are likewise unjustified. First, Bell Atlantic timely provided RCN with the requested SS7 route diversity in the summer of 1998; however, due to a communication breakdown, RCN did not recognize until November 1998 that it had been furnished with the documentation it requested to demonstrate that such route diversity was in effect. Second, Bell Atlantic has provided RCN access to the calling name database in a timely fashion. Finally, Bell Atlantic did not agree to provide STS-1 interconnection in the interconnection agreement with RCN. Bell Atlantic is, however, developing a tariffed product per RCN's request. With respect to D8ZS, which is a type of transmission needed for trunks to carry 64 kilobit clear channel signaling, there are many Bell Atlantic central offices that do not support trunk facilities with D8ZS. Bell Atlantic is providing D8ZS-capable trunks where they can be supported.

### f. Access to xDSL Services

AT&T, MCI WorldCom, Sprint, and RCN, allege that Bell Atlantic has acted improperly with respect to the provision of xDSL services.[35] They claim that Bell Atlantic has not provided in a timely and nondiscriminatory manner unbundled access to xDSL-capable loops (including those served by digital loop carrier), collocation, and resale of xDSL services.

Response: Bell Atlantic is not currently offering xDSL services on a retail basis throughout much of its service territory, and therefore cannot make such services available for resale or unbundling. The FCC recently clarified the rules that will apply to ADSL in its Advanced Services Docket, and Bell Atlantic will comply with those rules. Furthermore, Bell Atlantic has provided xDSL capable loops in conformance with the terms of its interconnection agreements with competitors.

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[33] RCN at 4; BayRing at 8-9.

[34] RCN at 4

[35] AT&T at 18-19; MCI WorldCom at 43-44; RCN at 4; Sprint Brauer Aff. Att. E at 6.

### g. Enhanced Extended Link

RCN claims that Bell Atlantic attempted to restrict RCN's use of Enhanced Extended Link offerings in New York to instances where the offerings are used predominantly to provide switched local exchange and associated switched exchange access services.[36]

Response: Bell Atlantic's Enhanced Extended Link is a service that it voluntarily offers to allow competitors to avoid the need to collocate in every central office where they serve customers. This service is not required by the 1996 Act, and is not subject to the Act's pricing standards. Moreover, at its December 16 sunshine meeting, the New York commission announced that it has decided that the bulk of these limitations are appropriate and will be upheld. These limitations are necessary to ensure that the service is used to provide competing local services, and not solely to displace Bell Atlantic's exchange access services.

## 5. RESALE ISSUES

### a. General Resale Issues

Some commenters allege that Bell Atlantic has not provided resale services in a timely and appropriate manner, and CTC claims that it has been forced to file an antitrust suit as a result.[37]

Response: This allegation is refuted by the large number of resale lines in Bell Atlantic's territory, and their steep and steady growth over time. Bell Atlantic already has provided over 534,000 lines to resellers. According to its own figures, CTC has obtained over 47,000 resold lines in its less than one year of operation as a reseller.[38] Moreover, the mere fact that CTC filed an antitrust claim -- the merits of which have not been adjudicated -- in no way establishes that Bell Atlantic is guilty of misconduct.

### b. Resale of Voice Mail Services

A number of commenters complain that Bell Atlantic refuses to resell voicemail services, and assert that there is a tying arrangement between Bell Atlantic's local exchange service and its voicemail service.[39]

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[36] RCN at 5.

[37] CTC at 13.

[38] CTC Communications News Release, CTC Communications Corp. Reports Record Revenues, Aug. 10, 1998.

[39] Hyperion at 35; Focal at 26, BayRing at 28, CTC at 28; CoreComm at 32; State Comm. at 22.

Response: The Commission has held that voice mail and other voice messaging services are not "telecommunications services," and therefore ILECs are not required to offer these services for resale under section 251.[40] Moreover, the voice mail market is highly competitive and CLECs are free to obtain voice mail services from third parties and bundle them with resold Bell Atlantic services; indeed, many CLECs in Bell Atlantic's region are doing so. In light of these facts, RCN, the chief proponent of this complaint, recently withdrew the complaint it had filed with the FCC on this subject.

### c. Contract Service Agreements (CSAs)

Several CLECs represented by the law firm of Swidler Berlin Shereff Friedman allege that Bell Atlantic improperly has refused to "assign" customers with contract service agreements (CSAs) to resellers, and that Bell Atlantic imposes contracted-for termination liabilities on customers who terminate service with Bell Atlantic.[41]

Response: Bell Atlantic fully complies with its obligations under the Act: All CSAs are available for resale; all CSAs are available to resellers at a wholesale discount; and all customers that want to terminate a CSA and switch to a reseller are free to do so. If a customer decides to switch, Bell Atlantic will provide to the reseller at a wholesale discount the same services offered under the CSA. Under these circumstances, however, the initial CSA agreement is terminated, and, to the extent the CSA contains a liability provision for early termination, this provision is triggered. As the FCC and several state commissions have recognized, the assessment of reasonable termination liabilities is not anticompetitive. Rather, it often is procompetitive, since it allows carriers to charge lower rates to begin with.

Some competitors, however, have demanded that Bell Atlantic simply assign its existing contracts and customers to them. The Act contains no such requirement. Nonetheless, some state commissions have held that CSAs are assignable under state contract law unless they expressly provide otherwise. Bell Atlantic will, of course, comply with these decisions.

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[40] Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, Memorandum Opinion and Order ¶ 314, CC Dkt. No. 98-121 (rel. Oct. 13, 1998) (citations omitted).

[41] BayRing at 23; CTC at 13-16, 28; Focal at 22; Hyperion at 29; KMC at 14, 27; RCN at 27.

## 6. OSS ISSUES

### a. OSS Performance and Parity

Sprint and a number of other commenters allege that Bell Atlantic has not provided competitors with access to its OSS in parity with the access that Bell Atlantic provides to itself.[42] Sprint also asserts that Bell Atlantic has not provided certain OSS performance measurements.[43] Finally, Sprint claims that ILECs in general do not have adequate OSS systems in place to serve larger, more complex customers, which are the target for Sprint's new ION network.[44]

Response: Bell Atlantic provides industry-standard interfaces to its OSS throughout its region. Bell Atlantic has worked extensively with CLECs to refine these interfaces and to address CLECs' concerns. At present, Bell Atlantic's OSS interfaces are handling several thousand orders per day. Moreover, Bell Atlantic is conducting tests to demonstrate that these interfaces are capable of handling even greater numbers. Sprint's claim that Bell Atlantic has not provided performance measurements for its OSS is without merit: Bell Atlantic tracks and reports on a state-by-state basis the performance of its OSS interfaces, and provides these results to the FCC, state commissions, and CLECs. Finally, with regard to Sprint's claims regarding large customers, Bell Atlantic is already successfully serving large customers using application-to-application interfaces that IXCs including Sprint have requested.

### b. OSS Cost Recovery

Several commenters complain that Bell Atlantic has proposed in many states that the cost of providing CLECs with access to its OSS be borne by CLECs.[45]

Response: The rates that Bell Atlantic charges for access to its OSS are cost-based and non-discriminatory, and have been approved by state commissions throughout Bell Atlantic's region. The claim that CLECs should not be required to bear the costs of establishing OSS interfaces for their use is inconsistent with the FCC's own decisions, given that the sole reason that Bell Atlantic has incurred these significant costs is to benefit CLECs.[46]

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[42] Sprint Brauer Aff. Att. E at 10-11; Hyperion at 34; BayRing at 26-27; Focal at 25.

[43] Sprint Brauer Aff. Att. E at 15.

[44] Sprint Brauer Aff. Att. E at 27.

[45] Hyperion at 34; BayRing p. 27; Focal p. 25; State Comm. at 22.

[46] *See* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, 16162 & 1375 (1996) ("If a requesting carrier, which may be a small entity, seeks access to an incumbent LEC's unbundled elements, the requesting carrier is required to compensate the incumbent LEC for any costs incurred to provide such

## 7. MISCELLANEOUS ISSUES

### a. UNE Combinations

Several commenters complain about Bell Atlantic's refusal to provide UNE combinations.[47] In addition, Cablevision and Sprint claim that, following the Eighth Circuit's decision in *Iowa Utilities Board*, Bell Atlantic improperly refused to provide them with UNE combinations even though their interconnection agreements allegedly provided for it.[48]

Response: The Eighth Circuit has held that requiring local exchange carriers to provide a platform of pre-combined network elements would be contrary to the Act.[49] Moreover, the claim that Bell Atlantic voluntarily agreed to provide UNE combinations as part of its interconnection agreements is inaccurate. In "agreeing" to provide UNE combinations, Bell Atlantic made clear that it was doing so only because the FCC had required it, and would do so only to the extent required by law. Its contracts also anticipated that individual provisions would need to be modified in response to changes in governing law. In any event, requiring LECs to recombine unbundled elements would be inconsistent with congressional intent, for it would undermine any incentive a competing carrier might have to invest in network facilities of its own.

### b. Opportunity New Jersey Service Commitments

The New Jersey Coalition (an organization funded primarily by AT&T and MCI) alleges that Bell Atlantic has failed to live up to its service commitments to invest in new technology to benefit New Jersey consumers, including the Opportunity New Jersey (ONJ) proposal to deploy broadband facilities.[50]

Response: The New Jersey BPU recently held an inquiry into Bell Atlantic's progress and compliance with ONJ and concluded that Bell Atlantic's current ONJ deployment schedule (originally proposed in 1992) continues to reflect "accelerated" deployment beyond what Bell Atlantic - NJ would be expected to deploy under a "business as usual" schedule. Bell Atlantic nevertheless agreed to a stipulation with the BPU and the state Ratepayer Advocate to further accelerate ONJ commitments.

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access.").

[47] Focal at 25; PaeTec at 8; BayRing at 26; RCN at 23; PaeTec at 8.

[48] Cablevision at 2-3; Sprint at 89.

[49] *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997), *cert. granted sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 118 S. Ct. 879 (1998).

[50] NJ Coalition at 2.

### c. Consumer Complaints

The New Jersey Coalition claims that, according to the FCC Common Carrier Bureau, consumer complaints against Bell Atlantic have risen in the past year.[51] Sprint claims that customer complaints in Vermont are up 9 percent since the Bell Atlantic/NYNEX merger.[52]

Response: The merger of Bell Atlantic and NYNEX has allowed the combined company to significantly increase service quality. According to the FCC's own Quality of Service reports, residential complaints against Bell Atlantic decreased over 17 percent from 1996 to 1997.[53] In New York, for example, complaints decreased 30 percent in 1997, and decreased further in 1998. Indeed, Bell Atlantic has received commendations from the New York PSC for its service. A NYPSC spokesman stated: "They've made a lot of progress, and that's been evidenced in the last several service quality reports the commission has reviewed."[54] At the Commission's recent en banc hearing, moreover, the New York consumer advocate testified that as a result of synergies from the Bell Atlantic/NYNEX merger, Bell Atlantic has invested an additional $1 billion in New York, and has improved service quality in the state. Sprint's claims regarding customer complaints in Vermont are incorrect. Complaints decreased considerably from 1996 to 1997 (by 23 percent) and have increased less than 1 percent in 1998 (from 342 to 345 complaints).

### d. IntraLATA Toll Dialing Parity

Some commenters complain about IntraLATA Toll Dialing Parity and assert that Bell Atlantic has litigated and lost on the position that it is not required to implement toll dialing parity by February 8, 1999.[55]

Response: Section 272(e)(2) provides that states may mandate intraLATA toll dialing parity by this time, but does not require that states do so. Two states that have addressed the issue -- Virginia and Maryland -- have agreed.

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[51] NJ Coalition at 3.

[52] Sprint at 89-90.

[53] J. Kraushaar, FCC, Industry Analysis Division, Quality of Service for the Local Operating Companies Aggregated to the Holding Company Level, Tables 2(a) and 3(a).

[54] At Deadline, Crain's New York Business, Feb. 23, 1998, at 1.

[55] Hyperion at 32; Focal Comm. at 23; BayRing at 24; State Comm. at 21.

### e. Marketing/Customer Winback

Some commenters suggest that Bell Atlantic has improperly used customer winback programs, and has improperly shared information between its retail and wholesale operations.[56]

Response: There is no merit to this claim. When a customer switches from Bell Atlantic to a competitor, or vice versa, the carrier that lost the customer is notified (to ensure that, among other things, the carrier knows to stop billing the customer). This notification is identical regardless of whether the customer is going to or from Bell Atlantic as its local carrier, however. Moreover, Bell Atlantic has not improperly shared information between its retail and wholesale operations.

### f. Cellular

Triton PCS claims that Bell Atlantic Mobile filed a baseless lawsuit and engaged in anticompetitive roaming negotiations.[57] Sprint PCS also complains about Bell Atlantic Mobile's roaming negotiations. The Commonwealth of the Northern Mariana Islands asserts that Bell Atlantic affiliates have opposed the policy of "rate integration" as it relates to CMRS carriers, and proposes that the Commission require Bell Atlantic/GTE to maintain rate integration across all subsidiaries and services, including wireless services.[58]

Response: Bell Atlantic Mobile filed suit to protect against disclosure of confidential competitive information by former high-level Bell Atlantic Mobile employees that Triton hired.[59] This case is in the discovery stage. Pending trial, however, the court has placed Triton and the former employees under a temporary restraining order prohibiting misuse of Bell Atlantic Mobile confidential information; the court also has sanctioned Triton and ordered it to pay attorneys' fees for refusing to comply with discovery obligations. As to roaming, the roaming negotiations between Triton and Bell Atlantic Mobile have resulted in an agreement on roaming rates. Roaming negotiations, like those involving Triton and Sprint, are private contractual negotiations that are irrelevant to this proceeding. Furthermore, the FCC is currently considering in a separate docket whether any action is necessary with respect to automatic roaming agreements between PCS and cellular carriers.[60]

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[56] Hyperion at 32; Focal at 24; BayRing at 25; CTC at 30; RCN at 23; PaeTec at 9.

[57] Triton PCS at 13-17; Sprint at 48.

[58] Commonwealth of Northern Mariana Islands at 15.

[59] *Cellco Partnership d/b/a Bell Atlantic Mobile v. Triton Communications, Inc. et al*, Docket No. ESX-C-283-98 (Superior Ct. NJ).

[60] *Interconnection and Resale Obligations Pertaining to Commercial Radio Services*, Second Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 9462 (1996).

The complaints raised by the Northern Mariana Islands are likewise misplaced, and are the subject of other proceedings pending before the Commission. The Commission has not yet decided whether to forbear from or reconsider rate integration for CMRS carriers.[61] Bell Atlantic has requested reconsideration and forbearance both on legal grounds, because CMRS rate integration was imposed without lawful notice and without record evidence, and on policy grounds, because the free competition within the wireless industry has produced pricing results such as SingleRate and One Rate pricing that achieve the social goals behind prescriptive rate integration.

[61] *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Order, 12 FCC Rcd 15739 (1997); Memorandum Opinion and Order, DA 98-1763 (released Sept. 1, 1998).

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## GTE's RESPONSES TO SPECIFIC ALLEGATIONS

Opponents of the merger – predominantly AT&T, MCI, Sprint, and a dozen or so CLECs represented by Swidler Berlin Shereff Friedman ("the Swidler Group") – have raised a number of allegations of unfairness by GTE. The Commission should decline to consider these allegations for four simple reasons.

First, all of the allegations are irrelevant to the merger application. It is well established that, in evaluating the public interest effects of a proposed merger, the Commission is to compare the status quo with the prospective post-merger world.[1] None of the subjects of petitioners' complaints – regarding negotiating positions, contract performance, service quality, or other matters – is in any way caused by or related to the merger. Indeed, almost all of them pre-date the merger by months or years.

Second, the Commission should not delve into issues that are or could be the subject of other FCC, state or judicial proceedings, as is true of virtually every complaint raised by petitioners. "The Commission has regularly declined to consider in merger proceedings matters that are the subject of other proceedings before the Commission because the public interest would be better served by addressing the matter in the broader proceedings of general applicability."[2] Similarly, the Commission has recognized that state public utility commissions

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[1] *Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee*, 12 FCC Rcd 19985, 20063-64, 20066-67 (1997) ("*BA/NYNEX Order*").

[2] *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation, Transferor to SBC Communications, Inc., Transferee*, FCC 98-276 (Oct. 23, 1998) ("*SNET/SBC Order*"); *see also BA/NYNEX Order*, 12 FCC Rcd at 20083, 20087-88; Applications of *Craig O. McCaw*, Transferor, and *American Telephone and Telegraph Company*, Transferee, 9 FCC Rcd 5836,

(Continued...)

have considerable tools "at their disposal to protect their ratepayers from unlawful anti-competitive abuses" that may arise.[3] Moreover, here Congress has specifically left these interconnection-related issues to the states (and, if necessary, to federal district courts).[4]

Third, the Commission should reject petitioners' efforts to have the Commission punish GTE for exercising its legal rights in the interconnection process. The Commission has consistently refused to penalize licensees for engaging in vigorous advocacy and appellate review. As the Commission has recognized, such activities "consist[] of either constitutionally protected free speech or business conduct that is legally permissible" that should not be penalized.[5]

Finally, as we detail in the remainder of this Appendix, the vast majority of petitioners' allegations either are unsupported or mischaracterize the record. The record shows that, in fact: GTE's efforts have resulted in hundreds of successful interconnection agreements and extensive

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(...Continued)
5877-78, 5887 (1994).

[3] *Applications of Pacific Telesis Group Transferor, and SBC Communications, Inc., Transferee*, 12 FCC Rcd 2624, 2643 (1997) ("*Pactel/SBC Order*"); *SNET/SBC Order*, ¶ 42.

[4] 47 U.S.C. § 252; *see also Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997), *cert. granted*, 188 S.Ct. 879 (1998); *Louisiana Public Utilities Commission v. FCC*, 476 U.S. 355 (1986).

[5] *PacTel/SBC Order*, 12 FCC Rcd at 2642; *see also General Communications Inc.*, 4 FCC Rcd 7447, 7450 (1988) ("As a general principle of law, antitrust liability does not arise from a party's exercise of its right to participate in legislative, judicial, or administrative proceedings and to petition its government for support or relief."). For example, in *Warrensburg Cable, Inc.*, 67 FCC 2d 662, 671-72 (1978) (internal citations omitted), the Commission declined to penalize a licensee's efforts to convince local authorities to grant a cable franchise because these efforts "appear[] to have constituted a legitimate attempt to induce government action, and to predicate sanctions thereupon would raise serious Constitutional questions."

progress in opening local markets to competitors (Section I); GTE's interconnection negotiation procedures and positions have been and continue to be wholly reasonable (Section II); GTE is fulfilling its contractual obligations and cooperatively addressing any problems that arise (Section III); and GTE continues to upgrade the overall quality of its service (Section IV).

## I. DISPARATE LEVELS OF COMPETITION IN THE GTE AND BELL ATLANTIC REGIONS REFLECT DIFFERING ECONOMIC REALITIES, NOT A COORDINATED EFFORT BY GTE TO IMPEDE COMPETITION.

**Allegation:** The Swidler Group commenters, relying on data reported to the Common Carrier Bureau, state that GTE has lost many fewer lines to competition than has Bell Atlantic, and contend that this statistical discrepancy shows that GTE has engaged in a "coordinated national strategy of delay and intransigence" aimed at "closing its markets to CLECs." *See, e.g.,* BayRing Communications at 10, Hyperion at 5, Focal at 5, US Xchange at 5-6, CoreComm at 8-9.

**Response:** The allegation is groundless. GTE has spent approximately $281 million and opened three local wholesale ordering centers employing more than 500 people to implement the market-opening requirements of the 1996 Act. As a result of these efforts, GTE has entered into 552 approved interconnection agreements. In addition, GTE has filed another 126 agreements for which approval is pending and continues to negotiate with dozens of competitors. GTE has provided 143,275 interconnection trunks to competitors, has exchanged 3.25 billion minutes of traffic, and has lost more than 110,000 lines to resale.[6]

At bottom, the numbers in the Common Carrier Bureau's report simply confirm what the Commission has long recognized: competition will come first to urban areas with high concentrations of business customers (such as those served by Bell Atlantic) and will be relatively slow to develop in more rural and residential areas (such as those served by GTE).[7] Thus, while GTE in fact faces significant competition (particularly in its few urban markets), it is no surprise that Bell Atlantic, region-wide, has experienced greater entry to date.

Indeed, as the following chart demonstrates, GTE's entry statistics compare very favorably with those of Sprint, which serves very similar territories.

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[6] *See* Common Carrier Bureau, Local Competition Report (Dec. 1998).

[7] *See, e.g.*, Remarks by Chairman Kennard to the Organization for the Promotion and Advancement of Small Telephone Companies (January 12, 1998) (transcript available at <http://www.fcc.gov/Speeches/Kennard/spwek801.html> (stating that "there is no immediate prospect of broad based competitive entry" in small and rural communities); Commissioner Furchtgott-Roth, Address to the International Telecard Association (July 17, 1998) (transcript available at <http://www.fcc.gov/Speeches/Furchtgott_Roth/sphfr813.html> (pointing out that "[t]here were some members of Congress who believed that competition would never come to rural America").

| Carrier | Total Switched Lines | Resale Lines Provided | Unbundled Loops Provided | Switching Centers with Collocation Arrangements |
|---|---|---|---|---|
| GTE | 18,301,076[8] | 113,487 | 14,088 | 168 |
| Sprint | 7,352,889 | 27,593 | 0 | 13 |

## II. GTE'S INTERCONNECTION POSITIONS AND NEGOTIATING PROCEDURES ARE CONSISTENT WITH THE ACT AND WHOLLY REASONABLE.

A number of CLECs suggest that the procedures GTE employed during the course of interconnection negotiations were unreasonable and designed to delay the negotiation process. GTE's conduct during and procedures used in interconnection negotiations are wholly irrelevant to the issue of whether the merger should be approved. The parties raising these issues have had ample opportunity in other forums to raise specific complaints about GTE's conduct or procedures for completing interconnection negotiations. Notwithstanding the fact that these issues should be addressed in other forums and not in the context of the proposed merger, GTE briefly addresses the allegations below.

### "Opting In"

**Allegation:** KMC and Hyperion claim that GTE refused to make arbitrated terms available to third-party CLECs and created other procedural roadblocks to force CLECs to renegotiate agreements. KMC at 15-16; Hyperion at 15.

**Response:** This is an unfair comparison. While GTE has been willing to make arbitrated terms from other contracts available to third-party CLECs in the negotiation process, it simply did not agree to the universal application of the terms of one contract from one state for use in other states.[9] Because GTE's capabilities vary from state to state, changes in the terms included in various state-specific contracts are often necessary. In addition, decisions in one state

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[8] 1997 ARMIS Report, 43-08, Table III, Column DJ.

[9] Of course, GTE also has provided entire agreements to third-party CLECs under § 252(i), as required by the Act. When CLECs invoke § 252(i) but then seek to change substantive or price terms of the contract, GTE treats such requests as new negotiations.

regarding various arbitrated interconnection terms differ considerably and may not be applicable in other states. It was not, and would not be today, practical or wise to take the results of specific proceedings in one state and attempt to use them on a blanket basis in a negotiation in another state that has its own requirements and nuances.

To the extent the allegation concerns the use of GTE's prototype contracts, the claim is also baseless. Those contracts evolved throughout months of negotiations. It was not unreasonable to ask a requesting CLEC to use GTE's latest terms and conditions as the starting point when negotiating a new contract.

**Raising New Issues**

**Allegation:** Parties allege that GTE attempted to raise new issues after the 160-day negotiation period ended. Hyperion at 16; RCN at 10; BayRing at 12.

**Response:** GTE is aware of only one occasion where it attempted to raise a new issue (a change in its environmental terms) after 160-day negotiation period ended without concurrence by the CLEC. In that particular case involving KMC Telecom, Inc., GTE admitted that its failure to raise the issue sooner was a mistake. Moreover, the arbitrator decided against GTE on this issue, a fact that negates any possible claim of injury or prejudice to a third party. No other party cites specific attempts to raise issues after the end of the negotiation period.

**OSS Electronic Interfacing**

**Allegation:** Parties allege that, prior to the FCC's Local Competition Order, GTE did not provide electronic access to its OSS in a timely manner. AT&T, Beasley Affidavit at 3.

**Response:** GTE was not obligated to offer such access until the FCC's August 1996 Local Competition Order. Nonetheless, GTE has always believed that electronic access to OSS is preferable to manual access where feasible. GTE continues to make this access available to CLECs that wish to use electronic access, and is working with industry groups to develop additional standards and methods of access.

**Negotiating Pricing Issues**

**Allegation:** AT&T claims that GTE insisted that price be negotiated before GTE would agree to negotiate any other issue. AT&T, Beasley Affidavit at 6-8.

**Response:** This allegation is incorrect. GTE did not insist that price be negotiated first. Rather, it stated its preference to negotiate items in a particular order. Given the importance of rates in any agreement, GTE's preference was to discuss these matters first before going to the minutiae of operational terms and conditions. GTE was free to adopt its negotiating strategy just

as AT&T was free to pursue a different strategy. AT&T also has been free to raise such issues in other more appropriate forums (*e.g.*, state commission proceedings) and has done so.

**Draft Interconnection Contracts**

**Allegation:** AT&T alleges that GTE refused to make its draft interconnection agreement available to AT&T in a timely manner, and that this refusal prejudiced AT&T. AT&T, Beasley Affidavit at 9.

**Response:** AT&T is wrong. In reality, AT&T insisted from the outset that the parties work from the AT&T draft agreement notwithstanding the fact that GTE had already shared a proposed agreement with AT&T (as it did with all other CLECs seeking interconnection agreements).

**Eighth Circuit Decision**

**Allegation:** AT&T contends that after the Eighth Circuit decision was released, GTE required it to renegotiate interconnection issues. AT&T, Beasley Affidavit 12-16.

**Response:** The contracts at issue expressly provided for renegotiation in the event of agency or judicial decisions that changed the parties' obligations, as the *Iowa Utilities Board* decision did. More fundamentally, these contracts were still in the negotiation/arbitration process and had not been signed or approved by state commissions. GTE therefore was well within its rights in seeking to renegotiate with AT&T.

**Interim Agreement**

**Allegation:** AT&T alleges that GTE refused to negotiate an interim agreement. AT&T, Beasley Affidavit at 14-15.

**Response:** Contrary to AT&T's allegation, just prior to a negotiating meeting scheduled for September 30, 1997, GTE offered to make available to AT&T an interim interconnection agreement based the same terms and conditions agreed to by other major carriers. AT&T refused to accept this interim agreement because it did not include AT&T's contract language and was not organized in the same way as AT&T's template contract. In fact, AT&T wanted to negotiate an interim and permanent contract simultaneously. Subsequently, the parties abandoned the idea of an interim agreement and decided to continue negotiating a permanent interconnection agreement.

**Honoring Arbitrated Rates**

**Allegation:** State Communications claims that GTE has refused to credit State for the difference between rates in State's contract and rates subsequently arbitrated before the state commission. State also protests that GTE delays the effectiveness of arbitrated rates until the interconnection agreement is approved. Finally, State asserts that GTE has required retroactive payment if lower arbitrated rates are later stayed, enjoined, or modified by the state commission or a court. State Communications at 6-7.

**Response:** GTE's positions are reasonable and consistent with the Act. GTE generally allows CLECs to take advantage of rates arbitrated by another CLEC under its "opt-in" policy explained above. However, to protect its legal rights, GTE requires any CLEC taking advantage of the results of a separate arbitration to abide by the terms of that arbitration. Thus, if a CLEC chooses to use rates determined in a GTE arbitration with another CLEC, it may obtain those rates when they become effective for the parties in the arbitration. If GTE were to agree to the rates outside the context of the underlying arbitration, it could be deemed to have agreed to them "voluntarily" and be unable to seek judicial review. Thus, State is not entitled to a "refund" for amounts paid before the rates of the arbitrated agreement become effective. Similarly, if the arbitrated rates are later changed by the state commission or a court, the "opting-in" CLEC must also agree to be subject to the changed terms.

**Reservation of Capacity on Poles, Conduits, and Pathways**

**Allegation:** As an example of GTE's alleged "unreasonable positions," AT&T cites GTE's statement that it "was reserving for itself the capacity it needed to meet its projected needs for 5 years...." AT&T, Beasley Affidavit at 3.

**Response:** GTE's reservation reflected its good-faith belief, prior to release of the Local Competition Order, that allowing ILECs to reserve capacity on poles, conduits, and pathways is critical since ILECs continue to be subject to carrier-of-last-resort obligations. At the time, GTE's position reflected current law and practice. Following the August 1996 release of the Commission's Local Competition Order, which limited ILECs' rights to reserve capacity,[10] GTE modified its position in the negotiations to be consistent with the Commission's decision.

**Allegation:** AT&T asserts that when GTE was asked what capacity was available in its poles, conduits, and pathways, "GTE responded only that it was more than 5%, but less than 95%." AT&T, Beasley Affidavit at 3.

**Response:** This allegation is incorrect. GTE explained to AT&T during the negotiations that the available capacity differs throughout each area from 5 percent to 95 percent. GTE urged

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[10] *Local Competition Order*, ¶ 1170.

AT&T to identify the specific areas in which AT&T was interested so that GTE could determine the capacity available in that area. In fact, GTE offered to allow AT&T to study GTE's maps showing the usage of poles, conduits, and pathways in the specific areas in which AT&T was interested.

**Contract Language Preserving Legal Rights**

**Allegation:** AT&T objects to GTE's proposals to include in the interconnection agreements statements that GTE does not voluntarily agree to the terms of the contracts. AT&T also objects to the GTE's refusal to sign agreements unless required to do so by a state commission. AT&T, Beasley Affidavit at 10-12.

**Response:** GTE has argued for inclusion of language on the non-voluntary nature of the obligations in the interconnection agreements in order to maintain its right to appeal and to avoid any allegation that it has somehow acquiesced in all of the terms of the contract. The PUC-approved contract, not the arbitration order, is the underlying document on which review is sought. GTE's concern is that, without such a statement in the contract, a federal district court may find that GTE must comply with the terms of the interconnection agreement as a matter of contract law, regardless of the requirements of the Act. Similarly, GTE signs interconnection agreements only when ordered to do so by the state commission so that GTE can preserve its right to legal review. Importantly, no delay in the implementation of interconnection agreements results from GTE's positions.

**Reciprocal Compensation**

**Allegation:** Hyperion asserts that "GTE has refused to pay Hyperion's affiliate in Pennsylvania reciprocal compensation charges for local calls, including calls that Hyperion has terminated to Internet service providers, notwithstanding a Pennsylvania Commission ruling to the contrary." Hyperion at 21.

**Response:** This statement is misleading. GTE pays reciprocal compensation for local calls. However, GTE has not paid reciprocal compensation for calls terminated to Internet service providers. GTE believes that such traffic is interstate, not local, and therefore is not subject to reciprocal compensation. Hyperion fails to note that it provided no basis for GTE to determine which calls delivered to Hyperion were truly local and which were passed on to an ISP; nor does Hyperion disclose that GTE has agreed to compensate it for truly local calls pursuant to a mutually agreed-upon percentage. In addition, the Commission has been considering the jurisdictional nature of dial-up ISP traffic and is expected to issue a decision shortly. Finally, the Commission should be aware that the Pennsylvania decision to which Hyperion cites was the outcome of a complaint proceeding involving another carrier. It does not apply to GTE; indeed, GTE is currently involved in an arbitration with Hyperion in Pennsylvania on this and other issues.

**Other Negotiation Issues**

**Allegation:** Certain CLECs claim that a number of other GTE negotiation proposals were unreasonable. In particular, they mention proposals regarding a mutual agreement to review advertising,[11] an environmental hazard provision,[12] conditions for termination of the agreement in the event of a sale of the exchange,[13] liability for the negligence of employees,[14] and universal service-related surcharges.[15]

**Response:** GTE believes that its proposals are valid negotiating positions, and several of these terms, or modified versions developed as part of negotiations, are included in GTE interconnection agreements approved by state commissions. Further, since all terms included in interconnection agreements are either mutually agreed to by the parties or mandated by a state commission in the arbitration process, there is no reason for the Commission independently to evaluate negotiation proposals, nor are they relevant to the merger.

**Litigation Positions**

**Allegation:** MCI asserts that because some of GTE's appeals were initially found to be premature, they were designed solely to cause delay. MCI at 12-13.

**Response:** GTE vehemently disagrees with such claims. GTE's appeals represented a legitimate legal position in a developing area of law. When parties began appealing state commission decisions, it was unclear at what point it was necessary to appeal to federal court under the Act and distinctly possible that courts would find that failure to appeal state arbitration decisions (as opposed to state orders approving arbitrated agreements) would result in a waiver of rights.

**Allegation:** MCI and AT&T claim that GTE's appeals of interconnection agreements are meritless. MCI at 12; AT&T at 16.

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[11] *See, e.g.*, CTC Comments at 19-22; RCN Comments at 10-12.

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] Sprint Comments at 13; US Xchange Comments at 5-6; AT&T Comments at 11-15, Beasley Affidavit at 10-11; State Comments at 7; CTC Comments at 23-26.

**Response:** GTE had a substantial legal basis for each of the issues it appealed. Moreover, the courts have found in GTE's favor on a multitude of issues. *See, e.g., MCImetro Access Transmission Services v. GTE Northwest*, Case No. C97-742WD (W.D.Wash. July 7, 1998); *MCI Telecommunications Corp., et al. v. Pacific Bell, et al., GTE California Incorporated v. Conlon, AT&T Communications of California, et al., GTE v. Conlon, MCI Telecommunications Corp., et al.*, Nos. C 97-0670 SI, C 97-1756 SI, C 97-1757 SI, 1998 U.S. Dist. LEXIS 17556 (N.D. Cal. Sept. 29, 1998). The assertion that GTE has appealed interconnection decisions to "intentionally delay the resolution of interconnection issues between it and CLECs" (MCI at 12) is wholly without foundation.

## III. GTE HAS FULFILLED ITS OBLIGATIONS UNDER THE 1996 ACT AND ITS INTERCONNECTION AGREEMENTS.

### OSS Ordering and Provisioning

**Allegations:** GST alleges that GTE's National Open Market Centers (NOMCs) have delayed implementation of orders for resale, interim number portability, and unbundled loops due to "impediments and inefficiencies" in order handling. GST, Thomas Affidavit at 2-5. GST also points out, however, that "GTE has begun the implementation of an on-line ordering system in which orders are submitted electronically to GTE. Thus some progress toward a more robust OSS is being made." GST, Thomas Affidavit at 5. Sprint alleges that GTE is rejecting a high number of LSRs in error. Sprint, Brauer Affidavit at 19-20.

**Response:** This issue has arisen under GTE's interconnection agreements and therefore should be resolved under the dispute resolution mechanisms in those contracts. In any event, however, GTE has worked extensively with GST and Sprint to resolve these matters cooperatively. Through monthly troubleshooting meetings with many CLECs, GTE has worked to improve the accuracy and completeness of CLEC orders and moved to improve its own processing procedures. GTE has offered extensive training to its own personnel and CLEC employees to improve efficiency.

The processes involved in providing third-party access to the functionality of legacy systems are complex and new. GTE therefore continually looks for ways to improve wholesale ordering processes To this end, GTE has implemented enhancements that permit orders to be submitted electronically (over the WISE web-based graphic interface processing system) rather than via fax if the CLEC so chooses.[16] All that is required is a computer, an electronic certificate

[16] GTE notes that the constantly evolving systems and interfaces for ordering, while ultimately improving performance, do create the potential for glitches during transitions and upgrades. In some instances on complex matters, supplemental forms are required after the initial form is submitted.

for verification purposes, and Internet access. In fact, GST has volunteered for GTE's new Beta processing system and utilizes the WISE interfacing system. Today, 100 percent of orders can be submitted electronically. All of GTE's regions have electronic access now and all should have substantial electronic flow-through for simple resale by mid-year 1999. GTE has established these issues as a priority and plans to have electronic flow through for as many order types as possible by the end of 1999.

**Allegation:** Sprint claims that GTE has "bill[ed] . . . its own retail intraLATA toll to Sprint's California local end user subscribers." Sprint, Brauer Affidavit at 18. Sprint also claims GTE has been slow to respond to the problem.

**Response:** GTE has worked extensively with Sprint in an effort to resolve these billing issues. There were initial problems with billing as a result of updating the relevant routing tables and upgrading GTE's legacy billing systems. When efforts to reach a technological solution failed, GTE developed a manual work-around in an effort to prevent duplicative billing. As a result of these initial mishaps, GTE has sent written apologies to affected customers. GTE continues to conduct a manual review of customers' statements to ensure accurate billing.

Needless to say, a manual solution is not ideal for GTE or Sprint. Indeed, this approach consumes considerable GTE resources at significant expense to the company. GTE has assembled a team to address the routing tables issue and their work is now 85-90 percent complete. GTE hopes to have a full technological solution to this billing problem in the near future.[17]

**Allegation:** Sprint charges that GTE has failed to provide an automated interface to CSR data and access to the unbundled network elements platform. Sprint, Brauer Affidavit at 9-10.

**Response:** As a preliminary manner, GTE never agreed to make UNE platforms available, and the Eighth Circuit has ruled that a "rebundling" requirement is contrary to the Act. As for CSR access, Sprint opted into AT&T's interconnection agreement, which does not currently provide for CSR access in the way Sprint would prefer. If Sprint wished to make automated access to CSRs a higher priority, it was free to negotiate a different agreement.

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[17] Sprint claims that a court action was filed by a customer as a result of these billing difficulties and that GTE was found to be responsible. However, prior to the customer filing this complaint in small claims court, GTE had already credited the customer for the amounts at issue and the court found that the relevant damages were less than $100.

## Carrier-Specific Allegations

Sprint, GST, US Xchange, and Hyperion raise a number of company-specific concerns related to interconnection agreements with GTE. GTE is committed to working cooperatively with these companies to resolve these matters. If a negotiated resolution cannot be reached, these interconnection agreements have specific procedures in place for resolving these issues through state commissions, when necessary. In light of these procedures and the unrelated nature of these allegations to the merger itself, the Commission should not entertain these claims.

## Sprint

**Allegation:** Sprint claims that GTE refused to provide marketing information for ADSL such as average loop length, percentage of customers located within 18,000 feet of a central office, and the percentage of customers that reside behind a DLC. Sprint, Brauer Affidavit at 20.

**Response:** GTE does not have a database with this type of information and is under no obligation to create one. Nonetheless, GTE is in the process of developing a database that includes this information and will make it available to Sprint and other CLECs as soon as practicable. In the interim, requests from CLECs for xDSL-capable loops will be handled like GTE's internal requests: GTE will assess technical feasibility on a case-by-case basis.

**Allegation:** Sprint asserts that GTE's collocation policies regarding DSLAMs and billing for power feeds are unreasonable. Sprint, Brauer Affidavit at 24, 27.

**Response:** GTE's collocation policy is consistent with the Act. GTE permits collocation for transmission and concentration functions, but not for switching or other intelligent router functions. *See* 47 U.S.C § 251(c)(6). As for power feed pricing, unlike other carriers, GTE does charge separately for the A and B feeds, but at half the price for each feed. Thus, GTE's two charges (for A and B) are roughly equal to other carriers' single power feed charge. This dispute therefore concerns only rate structure, not rate levels or overcharging.

**Allegation:** Sprint alleges that GTE charges Sprint three times the amount that it charges its own end users for a PIC change because of the service order charge. Sprint, Brauer Affidavit at 19.

**Response:** GTE charges all customers (both its own and CLECs') the same PIC change charge. GTE also collects a service order charge for all LSRs pursuant to the state-arbitrated

AT&T interconnection agreement opted into by Sprint. Processing of LSRs imposes costs on GTE, which GTE has a statutory right to recover.[18]

**GST**

**Allegation:** GST asserts that GTE has had a number of switch translation and routing problems. GST also asserts that GTE violated the terms of the interconnection agreements by requiring GST to submit an Access Service Request (ASR). GST, Thomas Affidavit at 5-8.

**Response:** GTE has required an ASR in order to implement new or additional local interconnection trunks because the LERG data may be ambiguous or inadequate to ensure accuracy. Specifically, the LERG does not cover all types of routing in all cases; rather, it assumes one set of point-to-point routing. If a CLEC has multiple trunk groups coming into an access tandem with multiple routing requests, the LERG information alone will not result in accurate routing. GTE therefore had to require completion of an ASR in order to get the detailed information necessary. Nonetheless, GTE has worked with GST to make ordering processes as efficient as possible and is developing a new form that provides the information needed to supplement the LERG without necessitating CLECs to complete an ASR.[19]

**Allegation:** GST alleges that GTE failed to conduct a comprehensive review of southern California switches in response to routing and translation problems and that a number of customers have been improperly billed as a result. GST, Thomas Affidavit at 8-9.

**Response:** GTE's technical support operations have worked with GST to resolve these issues. GTE believes this comprehensive process has alleviated these concerns; in fact, GST called to praise the GTE support personnel.

**Allegation:** GST contends that GTE unfairly required it to move from two-way to one-way trunking. GST, Thomas Affidavit at 9-11.

**Response:** GTE has not backed away from its contractual commitment to two-way trunking. Under existing arrangements using bill and keep rather than mutual compensation, a

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[18] Sprint also asserts that a large number of directory listing orders have been rejected for invalid reasons or for reasons undeterminable by Sprint. Sprint, Brauer Affidavit at 28. GTE has established a team to address initial coding problems with CLEC directory listing information. In addition, GTE has removed any false rejects from Sprint's contractual reject percentages.

[19] *See* Letter from William R. Santos, GTE Account Management to Brian D. Thomas, Vice President, Inter-Company Relations, GST (December 2, 1998).

two-way trunking arrangement functions well. However, GTE's Nortel switches are not capable of measuring traffic for purposes of reciprocal compensation in a two-way environment. Therefore, one-way trunking is necessary to ensure accurate measurement for the reciprocal compensation arrangement requested by GST. As acknowledged by GST, GTE is now handling pending two-way orders for trunks and has agreed to resolve the measurement problem in the future. On October 30, 1998, Monte Marti, GTE's Manager for Industry Management, sent a letter to GST outlining his understanding of the parties' joint agreement on handling two-way trunking issues. GTE has not yet received a full response.

**Allegation:** GST claims that GTE was responsible for delays in customer installations and network grooming. GST, Thomas Affidavit at 11.

**Response:** These delays were largely the result of GST internal issues. GST records and instructions regarding specific trunks were not in order and delayed their Hawaiian grooming projects. Other delays results from GST's failure to have collocated equipment in place and operational. GTE is prepared to move forward with testing and turning up GST's network trunking, but GST does not yet appear to be ready to proceed.

**Allegation:** GST sets forth various problems with ordering unbundled loops in Honolulu. GST, Thomas Affidavit at 11-13.

**Response:** This was an isolated incident that has been resolved. This GST request was the first unbundling order handled by GTE's Honolulu technicians, who required technical assistance. Today, GTE's Honolulu technicians are trained to address UNE orders, and GST's subsequent orders have been processed properly.

**Allegation:** GST contends that there were various problems with migrating the NXX code assigned to March Air Force Base from GTE to GST. GST, Thomas Affidavit at 13-14.

**Response:** This was the first such request in the GTE West Area. In addition, the interconnection contracts at issue did not provide for this type of transfer. Thus, GTE did not have a procedure in place to address these requests. Nonetheless, the transfer was made. The clarifying letter between the parties simply affirmed the propriety of the full NXX migration and established that GTE did not become bound by this initial transfer to any particular process for handling future NXX migrations.

**US Xchange**

**Allegation:** US Xchange states that, in Indiana, GTE failed to establish points of interconnection (POI) within 120 days and to provide 911/E911 information and coordination. US Xchange at 16.

**Response:** The delay in implementation of the points of interconnection resulted from the decision by US Xchange to alter its type of interconnection cable. GTE and US Xchange discussed the POI issues throughout the process and both parties agreed to the revised schedule. As for 911/E911 systems, GTE never "refused to coordinate arrangements" for interconnection. Rather, any delay resulted from US Xchange's failure to identify properly the implicated CLLI codes and the fact that US Xchange was the first carrier to request 911/E911 service from GTE in Indiana.

**Hyperion**

**Allegation:** Hyperion claims that "GTE has ... attempted to maintain its monopoly position in its service areas by ensuring that business customers who need essential services commit to long-term service contracts with punitive termination penalties if the term of the agreement is not met," and that GTE has opposed a "fresh look" right for such customers. Hyperion at 24-25.

**Response:** Hyperion's argument is without foundation for two reasons. First, the use of long-term contracts with termination penalties is a legitimate competitive tool used in a variety of industries, including telecommunications. Under GTE's tariffs (which, of course, are reviewed by the Pennsylvania PUC), GTE makes available discounts on certain services for customers wishing to commit to one-, three-, or five-year terms. The discounts reflect cost savings realized by GTE as a result of having predictable demand and the return on capital on contracts where special construction is required. If a customer wishes to terminate prior to the end of the service term, it is subject to a tariffed early termination charge that assures GTE of the revenue stream it anticipated in establishing the applicable term discount. That charge is not punitive; nor is it intended to deter customers from switching to a competitor. Indeed, term discounts have been in place for years, long before the advent of substantial competition.

Second, as Hyperion acknowledges, the issue of whether customers should be entitled to get out of their term commitments without making GTE whole is pending before the Pennsylvania PUC. *See Hyperion Susquehanna Telecommunications v. GTE North Incorporated*, Pa. PUC Docket No. C-00981575 (filed May 7, 1998). That issue is entirely unrelated to this merger, is not appropriate for consideration in this proceeding, and is outside the Commission's jurisdiction, since it concerns the provision of intrastate service. *See* 47 U.S.C. § 152(b).

## IV. SERVICE QUALITY ISSUES ARE OUTSIDE THE SCOPE OF THIS MERGER AND IN ANY EVENT ARE BEING ADDRESSED BY GTE.

Two parties – the Texas Public Utilities Commission ("PUCT") and the New Jersey Coalition for Local Telephone Competition ("New Jersey Coalition") – urge the Commission to consider the quality of service provided by GTE's telephone operating companies as part of this merger proceeding. Neither party, however, has shown that the merger will diminish GTE's service quality in any way. By sharing best practices, GTE and Bell Atlantic both expect to improve the service levels provided to their customers. Moreover, service quality issues already are being addressed by the PUCT (as well as the other state commissions that regulate GTE's telephone operations). Consequently, there is no reason for the Commission to consider the petitioners' claims in this proceeding, although GTE discusses them briefly below.

### Service Quality in Texas

**Allegation:** The PUCT claims that GTE has historically failed to provide adequate customer service in Texas and that the number of complaints is increasing. PUCT at 3-4. In addition, on December 17, the PUCT filed "Supplemental Comments" attaching "a detailed analysis of GTE-SW's service quality performance from the first quarter in 1996 through the second quarter in 1998" and reiterating its request that "a commitment by GTE-SW to improve its service quality performance be a precondition to approval of the merger." PUCT Supplemental Comments at 1, 2.

**Response:** GTE disagrees with the contention that it has failed to provide adequate customer service. Because of the low customer density of its service areas in Texas, GTE has more plant per customer – and, therefore, more plant-related complaints per customer – than some of the larger LECs, such as Southwestern Bell. In fact, GTE's average number of customers per square mile in Texas is one of the lowest in that state and is significantly lower than that of most RBOCs. However, GTE's customer service compares favorably with that of other carriers of similar size to GTE serving similar exchanges. Continual improvement of customer service has always been a high priority for GTE. In 1991, GTE re-engineered its customer service processes and moved testing and switching equipment to the desks of the repair clerks (*i.e.,* the employees receiving trouble or repair calls). The objective of this approach is to ensure that there will be no more than two GTE employees involved in solving any one customer's problem. As a result of this effort, GTE has dramatically reduced the average time it takes to solve a customer's problem from 11 hours to approximately three hours.

GTE has also put tremendous efforts into improving the quality of its network. In each of the last few years, GTE has invested approximately $240 per customer in its Texas network. The fruits of this investment are clear. In Texas, GTE is the largest carrier with 100 percent digital switches. In addition, GTE has met or exceeded all of its network upgrade obligations under the Texas Public Utility Regulatory Act ("PURA") and is on schedule to complete its fiber and digital program in 1999. Moreover, GTE now has fewer troubles per one hundred lines than Southwestern Bell or Sprint, despite the fact that GTE service areas have lower customer density.

Although GTE's efforts to improve its customer service and network have led to significantly improved service, they have not yet resulted in the level of service that GTE

continually seeks to provide. To ensure further improvement, GTE is continuing its investment in both its customer service and network facilities. To this end, GTE has identified four areas on which it will continue to focus its efforts:

- communications with customers;
- meeting commitments (including installation intervals and resolution of billing disputes);
- reduction of cycle time on "non-fielded" activities (those where there is no need to dispatch a technician, such as the addition of vertical features); and
- reduction in the number of re-work tickets.

To ensure that GTE employees recognize the importance of improving customer service, customer satisfaction will be further emphasized in determining all 1999 management compensation. The merger with Bell Atlantic will only strengthen GTE's commitment, as Bell Atlantic has consistently made customer service a top priority. GTE believes that its continued investment in customer service and network facilities will ensure that it is able to provide its customers with even more dependable and higher quality service.

Indeed, examining Attachment A to the PUCT's Supplemental Comments shows that GTE's overall service quality easily meets or exceeds all of the PUCT's service quality standards. As an initial matter, as the PUCT acknowledges, all GTE customers in Texas (like all GTE customers nationwide) are served by digital switches. Approximately 81 percent of GTE's Texas customer have access to ISDN capability and all customers are expected to have such access by the end of 1999. Specific analysis of Attachment A further reveals that:

- The number of surveillance reports filed by GTE-SW has declined each year since 1996. *See* Table 1.1. Surveillance reports are filed when performance in a given exchange is below the value established in the PUCT's service quality rules.

- On a state-wide basis, GTE easily surpasses the PUCT's standard for percentage of regular orders completed in five working days. In fact, GTE's second quarter 1998 performance was the highest it has been since reporting commenced. It is true that, in 8 of GTE's 474 exchanges in Texas, performance did not meet the PUCT's standard. In some cases, the non-compliance was due to causes outside GTE's control, such as weather. GTE's dispersed service territory was hit by two major hurricanes and substantial flooding within the relevant period. Nonetheless, GTE is continuing to take steps to improve its performance.

- GTE has virtually eliminated the number of regrade orders held over thirty days, with a total of 6 in the first half of 1998. The PUCT's standard (regrade held orders not greater than 1 percent of access lines in any months) equates to a compliance level not to exceed 19,000 orders. *See* Figure 1.5.

- On a company-wide basis, GTE has far exceeded the PUCT's standard for percentage of installation commitments met. *See* Figure 1.3. Nonetheless, in 15 exchanges out

of the 474 served by GTE in Texas, surveillance reports were filed. GTE will continue to take steps to improve its performance.

- As the PUCT's report demonstrates, GTE-SW has met the minimum requirements for operator assistance answer time in every quarter except the second quarter of 1996. The PUCT notes that GTE's "performance has deteriorated compared to the fourth quarter of 1996," but the overall decline was from 2.14 seconds to 2.68 seconds – still well below the 3.3 second reporting threshold. *See* Figure 1.6.

- Similarly, GTE has met the standard for directory assistance answer time for every quarter except the second quarter of 1998. The PUCT notes deterioration compared to the first quarter of 1997, but GTE's most recent performance (4.98 seconds) is still well below the reporting threshold (5.9 seconds). *See* Figure 1.7.

- GTE's performance on percentage of business office answer time within twenty seconds has met or surpassed the PUCT's standard every quarter since the first quarter of 1997. *See* Figure 1.8.

- Likewise, GTE has easily surpassed the PUCT's standard for percentage of repair service answer time within twenty seconds every quarter since the second quarter of 1996. *See* Figure 1.9.

- In one of the most important service quality measures and a leading indicator of network quality, GTE's state-wide number of trouble reports per 100 access lines has consistently been well below that PUCT threshold – *e.g.*, 1.67 in the second quarter of 1998, compared to the standard of 6. The PUCT suggests that "the averaging of performance indicator in this category may indeed be masking poor performance in smaller exchanges located in low density rural areas," but nonetheless acknowledges that no surveillance reports have been filed, which indicates that performance in individual exchanges (including rural exchanges) has been good. In addition, GTE's performance in this areas exceeds that of any major carrier in Texas. *See* Figure 1.10.

- GTE has comfortably met the standard for percentage of out-of-service complaints cleared within eight working hours. While GTE has filed surveillance reports in 38 of its 474 Texas exchanges, it continues to work to improve responsiveness. *See* Figure 1.11. Again, GTE's performance exceeds that of the larger carriers in Texas. This is a significant accomplishment given the dispersed nature of GTE's network in Texas.

In short, while GTE remains committed to continuing its efforts to improve service levels throughout Texas, the record fails to reveal any pervasive problems and, in fact, shows that in several key areas, GTE is a leader among carriers serving Texas. Certainly, there is no basis for conditioning approval of the merger on commitments to improve service quality. GTE is already committed to doing so, and it believes that the record shows both that those efforts are working and that the merger will further enhance quality in Texas and the rest of GTE's service territories.

Finally, the PUCT has ample authority to address its particular issues, and GTE will continue to work closely with the PUCT to satisfy its concerns.

**Diversion of Resources**

**Allegation:** The PUCT states that it fears the merger could divert resources away from improvements to GTE's network and customer service. PUCT at 4.

**Response:** There is no basis for this concern. GTE has already made its capital plans to invest in its Texas network and the merger will not affect these decisions. In addition, GTE will continue to be subject to PURA obligations and has budgeted sufficient resources to meet them. Moreover, as explained above, Bell Atlantic regards customer service as a top priority, so the merger will only strengthen GTE's commitment to its network and its customers.

**Selling Exchanges**

**Allegation:** The PUCT also expresses concern that GTE's plans to sell some of its exchanges in Texas will result in increased pressure on the state's universal service fund. PUCT at 4.

**Response:** This concern is unwarranted. The exchanges GTE plans to sell have recently undergone extensive modernization so that they exceed the standard needed to meet universal service requirements. These exchanges have 100 percent digital switches and, despite their rural character, are completely one-party service. In addition, before these exchanges are sold, GTE will invest another $23 million to install ISDN and interoffice fiber and eliminate all open wire. Thus, there will be no need for the Texas universal service fund to finance any improvements to these exchanges to ensure customers in these areas continue to receive excellent service.

**J.D. Power Survey**

**Allegation:** The New Jersey Coalition states that, "[i]n a J.D. Power and Associates survey on the quality of local phone service, GTE ranked last among local phone companies." New Jersey Coalition at 3.

**Response**: The New Jersey Coalition's allegation is incorrect and fails to disclose that GTE's quality improved more in the past year than any other company included in the survey. As an initial matter, GTE did not rank last. In fact, with the exception of Cincinnati Bell and Southern New England Telephone Company (both of which serve densely populated, compact territories), GTE (along with Sprint and Frontier) was the top-rated independent telephone company.[20]

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[20] It is true that GTE was rated lower than the RBOCs. This is not a surprising finding,

(Continued...)

Of course, GTE is not satisfied with its rating and will continue to strive to serve its customers better. Those efforts already are producing results. Between the 1997 and 1998 surveys, GTE improved more than any other telephone company. The largest improvements came in the Cost of Service, Operators, Billing, and Calling Card categories, but GTE showed gains in every area measured by the survey. GTE expects that its performance rating will continue to increase and that the merger will enable it to provide even better service, as it incorporates best practices from Bell Atlantic into its customer service operations.

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(...Continued)
however, since those companies generally serve more urban territories where it is easier to perform maintenance and repair functions. Indeed, notwithstanding this difference in their operating territories, it is noteworthy that the largest gap between GTE and the RBOCs was in the extremely subjective "Corporate Image" category.